

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SHELA CAMENISCH, et al.,  
Plaintiffs,  
v.  
UMPQUA BANK,  
Defendant.

Case No. [20-cv-05905-RS](#)

**ORDER GRANTING MOTION TO  
EXCLUDE AND MOTION RE CLASS  
NOTICE**

Pursuant to Civil Local Rule 7-1(b), defendant's motion to exclude certain documents it contends were not timely disclosed or produced, or, in the alternative to reopen discovery, and plaintiffs' motion for an order resolving the parties' disputes regarding the form of class notice are suitable for disposition without oral argument, and the hearing set for June 1, 2023, is vacated. In light of an ongoing trial in an unrelated criminal matter, the further Case Management Conference set for that date is continued to Thursday, Jun 29, 2023, at 10:00 a.m., with a joint statement to be filed one week in advance.

Class notice

In opposition to class certification, defendant argued, among other things, that the proposed class definition was unduly broad insofar as it could be read to sweep in the PFI entities' commercial lenders. See Dkt. No. 98 at 7:16-18 ("such commercial lenders would undoubtedly be 'persons' who lent money to PFI 'through secured or unsecured debt instructions [*sic*,

1 instruments] . . . who did not recover the principal amount of their investment prior’ to PFI’s  
2 bankruptcy.”). On reply, plaintiffs disclaimed any intent to include commercial lenders. They  
3 pointed out that they had included no commercial lenders on their proposed class list and that  
4 commercial lenders are not generally considered “investors.” Dkt. No. 120 at 2:8-13. “To avoid  
5 any further confusion,” however, plaintiffs stated they would not object to a class definition “that  
6 specifically excludes commercial lenders.” *Id.* at 2:14-16.

7 The order granting class certification mischaracterized the contours of the parties’ dispute,  
8 and inadvertently drew a line between “corporate entities” and “individual investors,” rather than  
9 between entities in a commercial *lending* relationship with PFI and persons who *invested* in the  
10 various investment vehicles offered by PFI. Seizing on the language in the order, defendant now  
11 asserts it only intended to offer “commercial lenders” as one *example* of overbreadth in the  
12 proposed class definition. It argues all corporate entities should be excluded because  
13 they are “sophisticated investors that are differently situated from individual investors.” There is  
14 no evidence, however, that the “corporate entities” who invested in PFI necessarily were  
15 sophisticated or otherwise meaningfully distinguishable from individual investors. Indeed, from  
16 the entity names provided, it seems probable that many of the “corporate” investors were small,  
17 family-owned entities.

18 In any event, the imprecise language in the order granting class certification is not a basis  
19 for defendant to make new arguments about the proper scope of the class. Plaintiffs’ motion is  
20 granted. As no other disputes regarding the form or the mechanics of the notice remain, the  
21 proposed order submitted at Dkt. No. 170-3 will be entered.

22  
23 Motion to exclude

24 Plaintiffs assert they intend to support and quantify their damages claim with a “structured  
25 database” that was created by forensic accountants at FTI Consulting, originally for use in the PFI  
26 bankruptcy proceedings. According to plaintiffs, PFI’s contemporaneous business records were  
27 not well organized. “Rather than using a structured database system that assigned unique  
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1 identifiers to separate investors and investments, PFI recorded investor activity through a variety  
2 of unstructured repositories—from myriad spreadsheets with no consistent structure and text  
3 notations to third-party payment processor files to hardcopy files.”

4 When PFI was forced into bankruptcy, the bankruptcy court appointed an independent  
5 director to take control of the business, and it was that director who engaged FTI Consulting to  
6 convert PFI’s business records to a structured database “that captured the company’s data for  
7 every investor, every investment, and every transaction involving an investor.” Plaintiffs have now  
8 retained FTI Consulting to act as an expert witness in this action, but it appears the “structured  
9 database” was created as part of its work for PFI, not in its role as an expert in this case.

10 In the course of the motion for class certification, a dispute arose between the parties  
11 regarding how plaintiffs intended to prove their damages. The only issue crystalized at that  
12 juncture, however, involved the admissibility of the expert opinion of Daniel Salah, who had been  
13 retained by plaintiffs to present their damages analysis. The order granting class certification did  
14 not reach the ultimate admissibility of Salah’s report because plaintiffs’ proffered methodology for  
15 calculating damages “rests on PFI’s underlying records, not Salah’s analysis.” Dkt. No. 144 at 15,  
16 n. 8.

17 After the class certification order issued, the parties continued discussing the damages  
18 proof issue. Plaintiffs ultimately agreed to ask FTI to provide all the “unstructured data sources”  
19 used to create the structured database. Plaintiffs then produced that material, totaling over 700  
20 thousand pages, months after the close of fact discovery. Defendant now seeks to exclude those  
21 documents on grounds that the production was untimely, or, in the alternative, to reopen discovery  
22 to permit it to explore those records in greater detail.

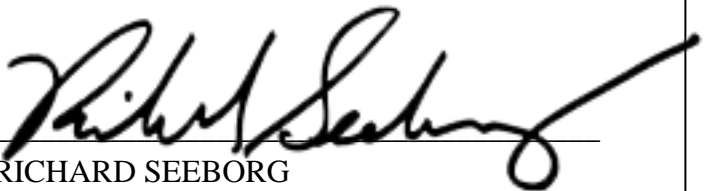
23 In opposition to the motion, plaintiffs disavow any intent to use the documents at trial.  
24 Rather, plaintiffs intend to rely on the structured database. Plaintiffs also argue that because the  
25 documents were always in the possession of a third-party, and equally available to defendant, they  
26 violated no obligation or rule by not producing them earlier. Nevertheless, as the documents were  
27 not produced prior to the fact discovery cutoff, and in view of plaintiffs’ statements that they do  
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1 not intend to use them, the motion to exclude will be granted, rendering the alternative request to  
2 reopen discovery moot.

3 To be clear, nothing in this order resolves whether the structured database, records  
4 retrieved therefrom, or any other evidence regarding that database or its contents will be  
5 admissible at trial. Although defendant insists the structured database is “expert work product,”  
6 that is not independently admissible in the absence of the underlying records, there appears to be  
7 at least an argument that the database constitutes business records of PFI—it was not created by  
8 expert witnesses for purposes of this litigation, but by persons employed by PFI itself. The  
9 structured database was a means of organizing and making useable PFI’s information so that PFI  
10 could carry out its duties to its investors (and other creditors) to the extent still possible, given its  
11 remaining financial assets. Whether the structured database and information contained therein is  
12 admissible on that or any other basis, however, remains to be decided.

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14 **IT IS SO ORDERED.**

15  
16 Dated: May 24, 2023

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19 RICHARD SEEBORG  
20 Chief United States District Judge  
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